

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MAHARISHI FOUNDATION USA, INC.,

Plaintiff,

v.

THE VEDA CENTER, LLC, THOM KNOLES, and THE MEDITATION HOUSE, LLC,

Defendants.

Case No. 4:11-cv-00562

**DEFENDANTS' MEMORANDUM
OF LAW IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

(Oral Argument Requested)

COME NOW, Defendants The Veda Center, LLC, Thom Knoles and The Meditation House, LLC, by and through undersigned counsel, and pursuant to LR 7(d), hereby submit this Memorandum of Law in Support of their Motion to Dismiss.

ARGUMENT

Defendants' contend that the Second Amended Complaint has failed to address or cure the defects (as referred to in this Court's Order (Docket No. 80)) in the previous Complaint. Because Plaintiff's primary claims, including those concerning Defendants' websites and reliance on scientific studies, have not materially changed, this conclusion is supported by the legal authorities and arguments in Defendants' prior Briefs in support of their Motions to Dismiss. Accordingly, Defendants rely on and incorporate by reference herein those prior filings (specifically Docket Nos. 60, 61, 62, 76, 77, and 79).

The Second Amended Complaint also seeks to make several new allegations of conduct said to constitute additional violations of trademark law and/or false advertising law. These new allegations of misconduct cannot cure the deficiencies in the prior allegations of misconduct, which prior allegations still fail to state a claim.

Defendants also contend that the new allegations themselves are not sufficient to state additional claims to those previously made.

These new allegations of misconduct seek to characterize certain e-mails, or web or Facebook postings of Defendants, but the actual documents relied on are not attached to the Complaint. It may not be necessary for the Court to refer to these documents to dismiss these new claims. However, in ruling on the new claims, this Court may consider these documents. Materials attached to, incorporated by reference in, or embraced by the complaint, and items appearing in the record of the case (such as the prior pleadings), may be considered on a motion to dismiss. *Noble Sys. Corp v. Alorica Cent., LLC*, 543 F.3d 978, 982 (8th Cir. 2008); see also 5 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, § 1357 (3d ed). Accordingly, for the purpose of providing the Court with a complete record of these new allegations, Defendants have attached copies of these documents, to the extent they have copies of them, as follows:

- Exhibit A – the article from the independent website, www.thefix.com, and the comments appended thereto, from March 2012 and referenced in the Second Amended and Substituted Complaint at ¶¶'s 52-53, 85, 157, 197, 225;
- Exhibit B – the Facebook posting by The Meditation House, LLC from March 9, 2011 and referenced in the Second Amended and Substituted Complaint at ¶¶'s 72-73, 90, 162, 202, 230;
- Exhibit C – the Facebook communications exchanged between The Meditation House LLC and Wayne Robbins, (including those from June 21, 2010 through June 25, 2010 as referenced in the Second Amended and Substituted Complaint at ¶¶'s 74-76, 91, 103, 138, 146, 163, 172, 187);

- Exhibit D – the answers of The Meditation House, LLC's to Plaintiff's First Set of Interrogatories, as referenced in the Second Amended and Substituted Complaint at ¶¶'s 54, 58.

CONCLUSION

In light of the matters set out in Defendants' prior Briefs and this Brief, Defendants' Motion to Dismiss Plaintiff's Second Amended and Substituted Complaint should be granted.

BRADSHAW, FOWLER, PROCTOR &
FAIRGRAVE, P.C.

By: /s/ Todd A. Strother

Todd A. Strother AT0007650
Timothy N. Lillwitz AT0008904
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004
Tel: (515) 243-4191
Fax: (515) 246-5808
E-Mail: strother.todd@bradshawlaw.com
E-Mail: lillwitz.timothy@bradshawlaw.com

By: /s/ Eric M. Braun

Eric M. Braun, NY State Bar No. 2331890
Level 34, 50 Bridge Street
Sydney, NSW, Australia
Telephone: (+61 419 208 276)
E-mail: ericbraun@emblegal.com
(Admitted Pro Hac Vice)

ATTORNEYS FOR DEFENDANTS

Original filed

Copy to:

Mark Zaiger
Jason Sytsma
Shuttleworth & Ingersoll, P.L.C.
500 Firststar Bank Bldg., P.O. Box 2107
Cedar Rapids, IA 52406
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon one of the attorneys of record for all parties to the above-entitled cause by serving the same on such attorney at his/her respective address/fax number as disclosed by the pleadings of record herein, on the 9th day of May, 2013 by:

U.S. Mail FAX
 Hand Delivered UPS
 Federal Express Other: EM/ECF

/s/ Lori O'Connor